

STATE OF MICHIGAN  
COURT OF APPEALS

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SARAH SWAIN GAVIN,

Plaintiff-Appellee,

v

THOMAS CHARLES GAVIN,

Defendant-Appellant.

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UNPUBLISHED

January 17, 2008

No. 272364

Kent Circuit Court

LC No. 04-002772-DM

Before: Davis, P.J., and Murphy and White, JJ.

MEMORANDUM.

In this divorce action, defendant appeals by leave granted the order of the trial court granting partial summary disposition in favor of plaintiff, a public school employee, with respect to a determination that the healthcare component of plaintiff's retirement plan was not subject to division or valuation under MCL 552.18 for purposes of establishing and distributing the marital estate. We affirm.

The trial court declined to treat plaintiff's retirement healthcare benefit as an asset of the marital estate subject to valuation and division under MCL 552.18, concluding that the benefit is not currently available or in existence, it is conditioned on retirement, and the benefit constitutes an option that the retiree may or may not elect to exercise. Thus, according to the trial court, plaintiff's retirement healthcare benefit lacks certainty of availability as required by MCL 552.18. The court stayed any further proceedings pending resolution of this appeal.

This Court reviews de novo a trial court's ruling on a motion for summary disposition. *Grosse Pointe Park v Michigan Muni Liability & Prop Pool*, 473 Mich 188, 213; 702 NW2d 106 (2005). Legal issues or questions that arise in the context of dividing property in divorce actions are likewise reviewed de novo on appeal. See *Pickering v Pickering*, 268 Mich App 1, 7; 706 NW2d 835 (2005).

On consideration of the particular claims and allegations made by the parties here and the unique circumstances posed in this case, and given the complete lack of documentary evidence, we hold, limited to the context of this case, that the trial court's ruling relative to MCL 552.18 did not constitute error such that reversal is warranted. We emphasize that the trial court stated

its intention to consider the healthcare benefit when addressing the issue of spousal support. On this record, we find no error in the court's approach.

Affirmed.

/s/ Alton T. Davis

/s/ William B. Murphy

/s/ Helene N. White